IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 76 of 1995

The Commissioner of Income Tax ... Applicant.

vs.

M/s. K. A. Malle Leasing Co. Pvt. Ltd. ..... Respondent

Mr. Parag Vyas for Applicant.
Ms. Asifa Khan for Respondent

CORAM: V**. C. DAGA AND A. S. AGUIAR JJ.**

Date: 10th August, 2005.

P. C. :

1. By this reference under section 256(1) of the Income-tax Act the Tribunal has referred the following question of law for opinion at the instance of the Revenue:

> (1) Whether on the facts and in the circumstances of the case, the Tribunal was right in setting aside the issue regarding the allowance of investment allowance othe leased plant and machinery on the ground that the controversy was covered in favour of the assessee and against the department by the Special Bench decision

of the Tribunal in the case of Income Tax Officer vs. First Leasing Co., of India Ltd., (1985) accepted the said decision?"

2. Both counsel appearing for the rival parties agree that the above question has been covered by decision in the case of **Commissioner of Income Tax vs. 1. Shaan Finance (P) Ltd., 2. First Leasing Co., of India Ltd.,** reported in [1998] 231 ITR 308. Needless to mention that while setting aside the finding recorded by the CIT (Appeal), the Tribunal has relied upon its own Special Bench judgment in the case of Income Tax Officer vs. First Leasing Co., of India Ltd., (1985). The said judgment appears to have been affirmed by the Apex Court in the case cited supra. In this view of the matter the question referred to us is answered in the affirmative i.e. in favour of the assessee and against the Revenue. Reference accordingly disposed of with no order as to costs.

(V. C. DAGA J.)

(A. S. AGUIAR J.)

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